

EXHIBIT

#18

1 UNITED STATES BANKRUPTCY COURT
2 Case NO. 07-15195 (MS)

ORIGINAL

3 IN RE: BAYONNE MEDICAL CENTER:

4 ALLEN D. WILEN,

5 Plaintiff,

6 v.

7 BAYONNE/OMNI DEVELOPMENT
8 LLC, et al,

9 Defendants.

DEPOSITION OF:

ADOLPH WALTER

10 TRANSCRIPT of testimony as taken by and
11 before MELISSA A. HILDEMAN, a Certified Shorthand
12 Reporter Realtime and Notary Public of the State of
13 New Jersey, at the offices of GRUEN & GOLDSTEIN,
14 1150 West Chestnut Street, Union, New Jersey 07083,
15 on Monday, March 1, 2010, commencing at 10:04 in the
16 morning.

1 A. I would think so, yes.

2 Q. Now, under the heading Highest
3 and Best Use on the same page, I'm quoting -- tell
4 me if I read it incorrectly. "As a more
5 productive income-producing enterprise as proposed
6 by Bayonne Medical Center, see Addendum." Did I
7 read that correctly?

8 A. Where -- what page are you on?
9 Oh, there's no page numbers on it.

10 Q. There is no page number. It's
11 called "Summary and Conclusions." The very
12 beginning.

13 A. Oh, yeah, "Reconciliation."

14 MR. FALANGA: No, look at your
15 report.

16 MR. GRUEN: I'll find it for you.

17 Q. Okay. So I'm going to ask you to
18 look at what you defined as the highest and best
19 use. Have you read it? It's just one sentence.

20 A. I am reading it. I have
21 cataracts.

22 Q. Okay. Just take your time. I'll
23 read it aloud again. "Highest and best use as a
24 more productive income-producing enterprise as
25 proposed by Bayonne Medical Center. See

1 Addendum."

2 A. Yeah, highest and best use would
3 be with all the vacant land. It would be more
4 productive. Actually, maybe I was referring here,
5 I had my mind, at that time, the building that
6 they were going to be putting up.

7 Q. Well, you refer to the Addendum.
8 That was the Addendum we saw earlier that talked
9 about the building they were going to put up --

10 MR. FALANGA: Object to form.

11 Q. -- correct?

12 MR. FALANGA: Object to form.

13 A. I think so.

14 Q. So my question then would be, did
15 you value this property based upon this
16 description of highest and best use?

17 MR. FALANGA: Object to the form.

18 A. I thought the highest and best
19 use would be that that vacant land would be --
20 could be used for some other use.

21 Q. Did you factor any of the
22 features of the Addendum into your appraisal?

23 MR. FALANGA: Object to the form.

24 Let the record reflect that --

25 A. I didn't know this was the

1 Addendum.

2 MR. FALANGA: That's -- object to
3 the form.

4 A. I didn't do this.

5 MR. FALANGA: Right. I'm letting
6 the record reflect that Mr. Gruen has presented the
7 witness with Exhibit D. Walter-4, which is not the
8 report.

9

10 EXAMINATION BY MR. GRUEN:

11 Q. You want the question back again
12 now?

13 A. I didn't consider that at all.

14 Q. Okay, thank you.

15 Are you familiar with the term
16 Certificate of Need?

17 A. I've heard of it.

18 Q. Okay. Did you consider at all in
19 connection with your appraisal whether Bayonne
20 Medical Center had a Certificate of Need for
21 development consistent with the Addendum?

22 A. I didn't get into this.

23 Q. "This," meaning the Addendum.

24 A. The Addendum.

25 MR. FALANGA: Object to form.

1 Q. The Addendum had no impact on
2 your analysis; is that correct?

3 A. No.

4 MR. FALANGA: Object to form. The
5 characterization of the Addendum has not been
6 established in the record.

7 A. I did it as is. Do I even have
8 that? "See Addendum," okay.

9 Q. Once again, the Addendum was
10 something you received from Bayonne Medical
11 Center; is that correct?

12 MR. FALANGA: Object to form.

13 Q. You can answer the question.

14 A. Yes.

15 Q. And before doing your appraisal
16 report, correct?

17 MR. FALANGA: Same objection.

18 A. Yes.

19 Q. If the -- if the buildings were
20 smaller than the 25,000 square feet that you've
21 shown us you determined was their square footage,
22 would that affect your opinion as reflected in the
23 appraisal?

24 A. I think it would.

25 Q. Okay. I'm going to skip through

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15 on Monday, March 1, 2010, commencing at 10:04 in the
16 morning.

1 Q. Brockman?

2 A. Herman Brockman.

3 Q. And the details, meaning what
4 they had in mind.

5 A. Pretty well this. Yes. I don't
6 know if it's in the appraisal there. Is there a
7 letter? Here. I asked -- that's where the
8 confusion came in. They asked me how much would
9 this be about.

10 Q. How much would you charge?

11 A. How much I would charge? And
12 from him talking about putting up a new building
13 on the land that was vacant, and I asked him, You
14 have construction plans and so on; and he was
15 unsure, but I gave a quote on doing a -- also a
16 construction, new construction there.

17 Q. On doing what about new
18 construction?

19 A. A nursing home they wanted to
20 build.

21 Q. But what was the proposal about,
22 this alternate proposal or additional proposal
23 that you made?

24 A. That I made?

25 Q. Yeah.

1 A. I was only interested in what I
2 would -- they were interested in how much I would
3 be charging for an appraisal.

4 Q. Okay.

5 A. It was a lot more than what it
6 wound up. And that's what that letter here -- I
7 asked Apsel to send me some kind of a thing
8 because after that meeting, they were all over the
9 place. They weren't specific like people that are
10 -- they were layman. So I was confused as to
11 actually what did they want me to do. Did they
12 want me to do an appraisal on what it would cost
13 for putting up a new -- a new building. Then I
14 quoted it. It was a lot more, maybe \$7,500, in
15 that range, I usually would charge for something
16 like that. So I called them up -- Marvin, I
17 called up -- I don't know if it was the same day
18 or next day -- to get a clarification. I asked
19 him to make up something, a list, and this is what
20 he made up and sent me.

21 Q. Okay.

22 A. And in here --

23 MR. GRUEN: We can mark this now.

24 (Exhibit Walter-4, Multiuse Medical
25 Arts Building, marked for identification.)

1 Q. So you say a couple days later
2 after that first meeting with Hausmann, Apsel and
3 Brockman, they sent you this document, Defendant
4 Walter-4, as you understood it, to further clarify
5 what they had in mind.

6 A. I needed a clarification as to
7 what they expected me to do. Actually, that's
8 what it comes down to.

9 Q. Okay. So you got this document
10 in response to your request to them for
11 clarification of what they wanted you to do.

12 MR. FALANGA: Object to the form.

13 Q. Is that correct?

14 A. I believe -- I believe that's
15 what he made up here, explaining everything here,
16 but it still had the nursing home in here. He's
17 talking about nursing -- all I did was then went
18 down, they were interested in a price, too, to
19 keep the price down. So --

20 Q. Price, meaning your fee?

21 A. My fee. They settled on that I
22 do as is --

23 Q. Appraisal.

24 A. -- appraisal, which is vacant
25 land and the building, two buildings on there.

1 They call it the phone building. And then there
2 was a building next to it, attached to it, but
3 separate, that was formerly a glass, auto glass,
4 but it was vacant.

5 Q. That's the warehouse building.

6 MR. FALANGA: Object to form.

7 Q. Was that warehouse building
8 one-story?

9 A. That's a one -- no, that's not
10 the one -- actually, the warehousing was in the
11 phone building. They had storage in there, and
12 they had the supplying utility, oil burners,
13 furnaces, small offices, but mostly a lot of
14 storage, a lot of wasted space that wasn't being
15 used, so to speak --

16 Q. Uh-huh.

17 A. -- but could be used for offices
18 when I was going through it.

19 Q. So after you received Defendant
20 Walter-4, is this correct, you then --

21 A. I called them up and talked to
22 him on the phone. I says, Listen, you know, this
23 here is -- is -- I still don't know. I says, I
24 think what you need -- I told them what I thought
25 would be good because he didn't have plans

1 available --

2 MR. FALANGA: Can I see?

3 THE WITNESS: Yes.

4 A. There was no plans available as
5 far as the new construction they were going to put
6 on there.

7 So I said, Why don't I do the -- do
8 it as vacant land as is, what you have there now.
9 Get a value on that. And when you get the plans,
10 or the contractors, or whoever, you know, get it
11 together and at least you know what the land is
12 and what you have there.

13 MR. FALANGA: What was marked is
14 Walter-2. I apologize. I was confused here.

15 THE COURT REPORTER: It was 2 -- so
16 1 was the subpoena, 2 is the report, 3 is the
17 September 16th letter and 4 is the whatever is
18 there.

19 MR. FALANGA: That's it. Thank
20 you.

21 THE WITNESS: Am I confusing or
22 what?

23 MR. GRUEN: No, no. It's fine.

24

25 EXAMINATION BY MR. GRUEN:

1 Q. When you made the suggestion,
2 what was the response, if any?

3 A. Well, they asked how much. And I
4 quoted, I think it was 40 -- \$4,800 for it. And I
5 came at -- the price I came to is because usually
6 in Bayonne or Jersey City, Hudson County, if it
7 was, like, a mixed-use, with a store on the bottom
8 and maybe three/four commercial units --
9 apartments above, I would charge about 2,000. So
10 I figured two floors...

11 Q. Any further discussions about the
12 scope of your assignment in that next call?

13 MR. FALANGA: Object to the form.

14 A. My what?

15 Q. The scope of your assignment.

16 What it is that you were going to be doing.
17 Anything else that you discussed about what you
18 were going to be doing, as opposed to your fee, in
19 the next call?

20 A. I put it -- I think I have it in
21 my -- about a fee?

22 Q. No. Other than the fee. The
23 assignment, what you were going to be doing. Any
24 further discussion about --

25 A. I told them I was going to do it

1 as is.

2 Q. Let me -- let take you to --

3 A. You might want that. I have a
4 copy.

5 Q. I'm going to come back to it.

6 MR. FALANGA: We're going to need
7 to keep the original exhibits here.

8 THE WITNESS: Oh, I'm sorry.

9 MR. FALANGA: That's okay. Just
10 until the conclusion of the deposition.

11 THE WITNESS: I have it here. Just
12 stamp it Copy, so I don't get them mixed up.

13

14 EXAMINATION BY MR. GRUEN:

15 Let me show you on your appraisal
16 report, Walter-2. The pages are not numbered, but
17 it's the first series of photographs. The one on
18 the top is called, "Subject, front view," and the
19 one on the bottom is called "Subject, front view."

20 A. Yes.

21 Q. I referred earlier in my
22 questioning to a one-story warehouse. Does the
23 photograph on the bottom reflect what you saw at
24 the site?

25 A. The bottom one does, yes.

1 Q. Okay. Is that -- would it be
2 fair to describe that as a one-story warehouse?

3 MR. FALANGA: Object to the form.

4 A. It was vacant, and I don't know
5 if they were using it as a warehouse. It had an
6 overhead door. I think they were using storage
7 space. If it was locked, I couldn't get in, so
8 this is from memory. I looked in through the
9 glass.

10 Q. Now, did you have any further
11 conversations with either Brockman, Hausmann or
12 Apsel beyond the one that you just described and
13 before you undertook the appraisal?

14 A. Just say that again.

15 Q. Any further conversations with
16 any of these gentlemen from Bayonne Medical Center
17 before you went out and did the appraisal?

18 A. Before I went out, no.

19 Q. Did they ever tell you that they
20 were proposing to sell the property?

21 A. No, they wanted to put a
22 construction -- a nursing home on it.

23 Q. Okay. So they did not tell you
24 that they were interested in selling the property?

25 MR. FALANGA: Object to the form.

1 A. No. I don't think they knew
2 themselves what they wanted to do...

3 MR. FALANGA: It's all on the
4 record, so you know.

5 THE WITNESS: It's --

6 MR. FALANGA: I understand.

7 THE WITNESS: I was very confused
8 with them. They were amateurs, so to speak.

9 Q. How were they amateurs?

10 A. Amateurs?

11 Q. Yeah.

12 A. They were all over the place. I
13 couldn't -- that's why I had to call up and find
14 out what exactly do you want, you know, as far as
15 the appraisal is concerned.

16 Q. But ultimately then, if I
17 understand you correctly, after the clarification,
18 you determined that the facts set forth in
19 Defendant Walter-4 would not be the basis for your
20 appraisal report; is that correct?

21 MR. FALANGA: Object to the form.

22 Q. You can answer. So you ignored
23 for purposes of the appraisal what's set forth in
24 that document, correct?

25 A. Well, yeah. I got clarification

1 on it.

2 Q. But the facts set forth in that
3 document were not used by you in connection with
4 the generation of the appraisal report.

5 A. No, no.

6 MR. FALANGA: Objection to the
7 form.

8 Q. Now, there's a series of
9 handwritten notes that I'm taking out of the file
10 that you produced a moment ago in response to the
11 Document Demand No. 1. They are on lined, white
12 sheets. These are the documents that you
13 mentioned that you put the red pen on. And I'm
14 going to have these marked as one exhibit.

15 (Exhibit Walter-5, Handwritten
16 Notes, marked for identification.)

17 Q. Last sheet, on the next-to-last
18 sheet there is a diagram. Are these the buildings
19 that comprise the subject of your appraisal?

20 A. Yes. This is --

21 MR. FALANGA: Object to the form.

22 A. This is a -- the thing you just
23 pointed out before.

24 Q. Referring to the building on the
25 left side?

EXHIBIT

#20

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195(MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

ORIGINAL

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate. :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

ROBERT S. BURNEY

VOLUME II

(Pages 36-115)

Plaintiff, :

-vs-

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of CONNELL FOLEY, L.L.P.,
85 Livingston Avenue, Roseland, New Jersey, on
WEDNESDAY, DECEMBER 15, 2010, commencing at 10:02
a.m., pursuant to Notice.

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1 you're reading from the bottom of the page on
2 LMEC001?

3 MR. COPLON: Correct, yes.

4 A. I believe that's because the
5 buildings that were in existence at the time had to
6 be demolished, and that was an added expense to the
7 purchaser. In other words, the buildings themselves
8 were specialty-use buildings for a hospital that
9 couldn't be used by other users.

10 Q. The buildings that existed were old
11 buildings, correct?

12 A. Correct.

13 Q. And when you say specialty use for
14 the hospital, what were they used for?

15 A. I don't recall the exact uses. I
16 think some of them may have been storage and other
17 things, but they were built for use by the hospital.
18 They were not going to be used and retrofitted for
19 the use contemplated by Omni, or anyone else for
20 that matter.

21 Q. So when the hospital was looking to
22 sell this property, is it fair to say that Cushman &
23 Wakefield was instructed or was told everybody
24 recognizes these buildings are teardowns, have to be
25 coming down?

1 MR. CAMBRIA: I object to the form of
2 the question in terms of everybody realized. It
3 just is rather vague. But go ahead, you can answer.

4 A. I think it was understood that no one
5 would pay for the value of buildings that they have
6 to knock down.

7 Q. And was it equally understood that no
8 one would want the buildings in their current
9 condition?

10 MR. PIZZI: Object to the form.

11 A. I can't say that nobody would want
12 them. There wasn't a buyer that was interested in
13 them of which the hospital was aware. And there
14 were also certain environmental issues related to
15 those buildings.

16 Q. What environmental issues are you
17 talking about?

18 A. I don't have the details here, but
19 there was certain environmental remediation that had
20 to be conducted in those buildings.

21 Q. So it was understood when Lindabury
22 commissioned the Cushman & Wakefield people, it was
23 understood that the concept of value would require
24 the appraiser to consider that any buyer would have
25 to both demolish the existing structures, remove the

1 existing structures and take care of environmental
2 issues?

3 A. That would be correct.

4 Q. Any transfer of that land to anybody?

5 A. I can't say that. Could there be in
6 the universe of buyers someone who would buy the
7 building as they existed? I don't know. No one had
8 apparently approached the hospital with that
9 transaction.

10 Q. And that would explain why the
11 engagement letter by which Lindabury retained
12 Cushman & Wakefield asked the appraiser to consider
13 the hypothetical condition that the property is
14 considered to be vacant land only?

15 MR. PIZZI: Object to the form.

16 A. I didn't have any direct
17 communications with Cushman & Wakefield, but I
18 believe that what you're saying is accurate.

19 Q. I notice on Bates stamp 3, Page 3, it
20 appears that Robert DeFalco signed the engagement
21 letter addressed to Mr. Ross, but there's no
22 signature of Mr. Ross. Can you explain that?

23 A. No. I never saw this until just
24 recently. I never even saw the engagement letter
25 until just recently. So I don't know why it wasn't

1 signed.

2 Q. The Cushman & Wakefield engagement
3 letter on Page 4 has a schedule of information that
4 Cushman & Wakefield needed to complete its
5 assignment. Did you have anything to do with the
6 communication or transmittal of that information?

7 A. I did not personally, no.

8 Q. If you look at Page 2 of the
9 engagement letter, LMEC2, it promises a report
10 within five days under the heading "Report
11 Delivery." Do you see that?

12 A. Yes.

13 Q. Did you have an understanding of why
14 that seems kind of rapid for an appraisal?

15 MR. CAMBRIA: Object to the form of
16 the question.

17 Q. Can you explain why?

18 A. I was not part of the discussions
19 between D.B. Ross and Cushman & Wakefield. I think
20 that at the time we wanted this appraisal as quickly
21 as possible.

22 Q. And for the record, for the reasons
23 you said earlier this morning?

24 A. Correct.

25 Q. Because of the financing issues?

1 A. Correct.

2 MR. PIZZI: Object to the form.

3 Q. In the process of selecting Cushman &
4 Wakefield, did you participate in that? Do you know
5 why they --

6 A. No, I was not involved in that. When
7 we determined that it was appropriate to obtain an
8 appraisal, D.B. said, "I'll take care of that." He
9 was the general outside counsel to the hospital and
10 he was willing to undertake that. I was busy with a
11 lot of other things at the time, so I gladly allowed
12 him that role of taking care of obtaining the
13 appraisal.

14 Q. And the decision to go to Cushman &
15 Wakefield, did you have any anything to do with
16 that?

17 A. I don't recall having anything to do
18 with it. I think the only thing I do recall talking
19 about was we wanted to have the appraisal prepared
20 by someone who's qualified and whose opinions were
21 respected.

22 Q. Did you have experience with Cushman
23 & Wakefield prior to this?

24 A. Yes.

25 Q. And you knew them to be qualified and

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PAUL W. KORCH

Representative for the Estate :

of Debtor, Bayonne Medical

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ORIGINAL

Plaintiff, :

-VS- :

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L.L.C., a New Jersey limited

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Defendants. :

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MONDAY, JANUARY 10, 2011, commencing at 9:15 a.m.,
pursuant to Notice.

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1 A. Yes.

2 Q. Did he tell you why it was limited to
3 land only?

4 A. Again, there were the issues over the
5 cost of demolition that were unknown at the time.

6 Q. Did he tell you at any time why the
7 engagement letter didn't include the value of the
8 improvements at the property?

9 A. Well, I do remember to a certain
10 extent the improvements were quite old and had
11 functional deficiencies. And there were discussions
12 on whether or not valuing the property as improved
13 would yield a credible number.

14 Q. And what does a "credible number"
15 mean?

16 A. A number that would be considered
17 reliable.

18 Q. And did you conclude that including
19 the improvements would not yield a credible number?

20 MR. PIZZI: Objection. It calls for
21 opinion. This man is a fact witness.

22 MR. GRUEN: We all understand that,
23 and arguments will be made later to the Judge over
24 the significance of this question and others related
25 to it.

1 A. Could you restate the question?

2 (The pending question is read by the
3 Reporter.)

4 A. Well, I think we suggested it. I
5 don't know if we included it.

6 Q. Suggested what?

7 A. That the land only should be
8 appraised.

9 Q. And the client agreed with your
10 conclusion?

11 A. Again, I don't know if it was a
12 conclusion more than a suggestion at the time.

13 Q. The client ultimately agreed with
14 your suggestion?

15 MR. PIZZI: Objection.

16 Q. Did the client ultimately agree with
17 your suggestion?

18 A. When you say "my suggestion," that
19 would be through Mr. DiFalco.

20 Q. Did the client ultimately agree with
21 the suggestion that was communicated through Mr.
22 DiFalco?

23 A. I believe so, if they signed the
24 engagement letter to that effect.

25 Q. Do you know the name Omni?